

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

LIN CHEN and XIN HU,

Plaintiffs.

v.

UR MENDOZA JADDOU, *in her
official capacity as* Director of U.S.
Citizenship and Immigration Services,

Defendant.

Civil No:

COMPLAINT TO COMPEL
AGENCY ACTION UNDER
28 U.S.C. § 1361 AND 5 U.S.C.
§§ 555(b), 706(1), AND FOR A
WRIT OF MANDAMUS TO
COMPEL DEFENDANTS'
ADJUDICATION OF FORM
I-130, PETITION FOR ALIEN
RELATIVE

Receipt No. IOE0909727955

COMPLAINT FOR WRIT OF MANDAMUS

To the Honorable Judges of Said Court:

Plaintiffs, Lin Chen and Xin Hu, through undersigned counsel, allege as follows:

I. INTRODUCTION

1. This is a civil action brought pursuant to 28 U.S.C. § 1361, 8 U.S.C. § 1329, and 28 U.S.C. § 1331, to redress the deprivation of rights, privileges and immunities secured to Plaintiffs to compel Defendant to perform a duty Defendant owes to Plaintiffs.

2. This action is brought to compel Defendant and those acting under her supervision to take action on a Petition for Alien Relative, Form I-130 (“Petition”) for Plaintiff Lin Chen (hereinafter “Lin”) to obtain an approved petition in order to permit her husband, Plaintiff Xin Hu (hereinafter “Xin”), to apply to become a Lawful Permanent Resident of the United States. The visa Petition was submitted on September 21, 2020.
3. Plaintiffs are eligible to have the Petition adjudicated because Plaintiff Lin is a naturalized United States citizen and she married Plaintiff Xin on August 11, 2020. Neither of them are convicted of any disqualifying criminal offenses. In filing the Form I-130 they have requested in writing a *bona fide* exemption under 8 C.F.R. § 204.2(a)(1)(iii) and they are not subject to any other bar under the Immigration & Nationality Act. Yet, despite filing the Petition in September of 2020, USCIS has failed to make a final adjudication.
4. Plaintiffs request that this Court issue injunctive relief and a writ in the nature of mandamus compelling the Defendant to make a determination to grant or deny the Petition under 8 U.S.C. § 1154.

II. JURISDICTION

5. This Court has general federal question jurisdiction over this action under 5 U.S.C. §§ 555(b) and 706(a), 28 U.S.C. § 1331(a) and 28 U.S.C. § 1346(a)(2). Jurisdiction is also conferred by 5 U.S.C. § 704.
6. This Court also has jurisdiction to grant declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and F.R.C.P. 57 and 65.

III. VENUE

7. Venue in the Northern District of Georgia is proper pursuant to 28 U.S.C. §1391(e). Defendant is an Officer of the United States acting in her official capacity, and the U.S. Attorney General's Office, the Department of Homeland Security ("DHS"), and the United States Citizenship and Immigration Services ("USCIS") are agencies of the United States. Further, Plaintiff Lin and her husband, Plaintiff Xin, reside in this judicial district.

IV. EXHAUSTION

8. There are no administrative remedies available for Plaintiffs to exhaust. Nevertheless they have made efforts to seek relief from the Defendant, to no effect.

V. PARTIES

9. Plaintiff LIN CHEN is a United States citizen. She submitted an I-130 Petition for her husband, Plaintiff XIN HU. Plaintiffs have resided together in Lilburn, Georgia, in Gwinnett County, since 2018. Plaintiff Lin is the petitioner on the Petition, and Plaintiff Xin is the beneficiary on that Petition. Plaintiff Lin properly filed the Petition with the Potomac Service Center on September 21, 2020.
10. Defendant UR MENDOZA JADDOU is the Director of USCIS, a fee-for-service agency which is responsible for the administration and enforcement of the immigration laws of the United States.

VI. FACTUAL ALLEGATIONS

11. Plaintiff Lin is a United States citizen. Plaintiff Xin is a native and citizen of China. He entered the United States in 2012 on a student visa and he has never left the United States since then. Plaintiffs were married on August 11, 2020 in Gwinnett County, Georgia.
12. On or about September 21, 2020, Plaintiffs filed form I-130 at the Potomac Service Center. *See* Exhibit A. The I-130 visa petition was filed under the immediate relative category. Thus, visa numbers are immediately available.

13. Plaintiffs have at all times met and continue to meet the requirements necessary to be adjudicated as immediate relatives.
14. According to USCIS, a Form I-130 such as that filed in this case should be processed in 12 months. *See* Exhibit B. In the last 5 years such petitions were adjudicated in as little as 6.5 months. *See* Exhibit C.
15. Plaintiffs' petition was filed in September 2020 and has therefore been pending for over 30 months. The Petition has been pending for nearly 3 times as long as the stated current processing time.
16. The USCIS has not issued an interview notice nor sent any request for additional information. Unfortunately, nothing has happened in this case.
17. Despite the passage of a significant amount of time, it does not appear that Defendant is moving forward on adjudicating Plaintiffs' Petition.

COUNT 1

1. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17 above.
2. Plaintiffs are eligible for immediate adjudication of this Petition.
3. Plaintiffs have suffered and will continue to suffer significant and irreparable harm because of Defendant's policies, procedures, acts and failures to act as described herein.

4. Defendant violated Plaintiffs' statutory right to apply for benefits which Congress has provided under the INA, depriving Plaintiffs of the opportunity to legally live as husband and wife here in the United States under the INA.

COUNT 2

5. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17 above.
6. Plaintiffs have suffered a legal wrong or have been "adversely affected or aggrieved" by agency action. 5 U.S.C. § 702. Plaintiffs are aggrieved by agency action, for which there is no other adequate remedy in a court.
5 U.S.C. § 704.

COUNT 3

7. Plaintiffs re-allege and incorporate by reference paragraphs 1 through 17 above.
8. Defendant owes Plaintiffs a clear and certain duty to adjudicate Plaintiffs' Petition.
9. Plaintiffs have no other adequate remedy.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully requests the Court:

1. Assume Jurisdiction over this action;
2. Issue a writ of mandamus compelling Defendant to immediately adjudicate the pending Petition;
3. Retain jurisdiction during the adjudication of the Petition in order to ensure compliance with the Court's orders;
4. Award Plaintiffs reasonable costs and attorney's fees under the Equal Access to Justice Act; and
5. Award such further relief as the Court deems just or appropriate.

RESPECTFULLY SUBMITTED this 15 of March, 2023.

_____/s/
Zainab A. Alwan, Esq.
Georgia Bar # 385074
Attorney for the Plaintiffs
Socheat Chea, P.C.
3500 Duluth Park Lane, Bldg. 300
Duluth, Georgia 30096
(770) 623-8880
(770) 623-8852 (fax)
zainab@socheatchea.com

CERTIFICATE OF SERVICE

This is to certify I electronically filed the foregoing **COMPLAINT FOR WRIT OF MANDAMUS** and its accompanying Exhibits with the Clerk of Court using the CM/ECF system. This system will automatically send email notification of such filing to all below Defendants who are registered with this system. In addition, in compliance with local rules, this initial Complaint and the accompanying Exhibits and summons have also been served by First Class Mail, postage pre-paid, on:

Ur Mendoza Jaddou,
Director
c/o Office of the Chief Counsel
5900 Capital Gateway Drive
Mail Stop 2120
Camp Springs, MD 20588-0009

Ryan K. Buchanan, U.S. Attorney,
Northern District of Georgia
75 Ted Turner Drive SW
Suite 600
Atlanta, Georgia 30303

Certified this 15th of March, 2023.

_____/s/_____
Zainab A. Alwan, Esq.
Georgia Bar # 385074
Attorney for the Plaintiffs
Socheat Chea, P.C.
3500 Duluth Park Lane, Bldg. 300
Duluth, Georgia 30096
(770) 623-8880
(770) 623-8852 (fax)
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Receipt No. IOE0909727955

LIST OF EXHIBITS

- | | |
|-----------|--|
| Exhibit A | Form I-130 Receipt; |
| Exhibit B | USCIS.gov processing times printout; and |
| Exhibit C | USCIS.gov average historical processing times. |

RESPECTFULLY SUBMITTED this 15th of March, 2023.

_____/s/_____
Zainab A. Alwan, Esq.
Georgia Bar # 385074
Attorney for the Plaintiffs
Socheat Chea, P.C.
3500 Duluth Park Lane, Bldg. 300
Duluth, Georgia 30096
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(770) 623-8852 (fax)
zainab@socheatchea.com